

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3672 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GABHUBHAI HIRABHAI RABARI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KC SHAH, A.G.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner has brought under challenge the detention order passed against petitioner-detenu Gabhubhai Hirabhai Rabari dated 21st March 1996 rendered by the first respondent under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as

"the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the detenu has been carrying on criminal and anti-social activities of causing hurt to innocent people with the aid of deadly weapons and creating atmosphere of fear and following offences have been registered in the Madhupura and Shahibag Police Station against the detenu:

1. Madhupura U/s. 452, 394, 427, 114 of I.P.C. The CR 57/95 matter is pending in the Court.
2. Shahibag U/s. 323, 427, 506(1) r/w. 114 I.P.C. The CR 330/95 investigation is in progress.

In the first matter the facts indicate that the petitioner in the company of his associates entered the shop styled Shraddha Emporium and selected pant piece and shirt piece. When asked for payment of bill of Rs.954/the petitioner replied to keep the amount pending. As the complainant refused to give the goods on credit the petitioner abused him and left the place. He returned at the place in the company of his associates during the evening time and by asking why the complainant was not giving goods on credit, he had beaten the complainant and his servant Manish with hockey and caused damage of show-case in the shop causing loss of Rs.200/and had taken away four pant pieces and shirt pieces amounting to Rs.900/-. In the second matter the facts indicate that the detenu in the company of his associates had gone to a shop styled M.P.Cold Drinks and had taken refreshment there. However, when the complainant Bansilal Veljibhai asked for the payment of bill of Rs.144/- he was beaten with fist blows. The petitioner and his associates then left the place. N.C.Complaint No.234/95 was given u/s.323 read with Section 114 I.P.C. The complainant was stopped when he was driving his Maruti Van nearby Shahibag Under-bridge and beaten with hockey stick. The glass of his car was damaged and loss of Rs.300/- was caused. The petitioner and his associates had beaten the complainant with the fist blows and sticks.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 4th March, 1996 and another occurred on 9th March 1996, both of which were

for dragging the witnesses on to the road and assaulting them with knife/razer and rushing to the people collected at the place with knife.

4. It is on the aforesaid two incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner.

5. I have heard the learned Advocate for the petitioner and learned AGP for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the decision of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. P. 1268. In that case also 5 cases were referred to in the grounds of detention. They were under Chapter XVI of the India Penal Code along with the provisions of the Arms Act. Two incidents were quoted from the cases which were referred to in the detention order. The same have been set out in paras - 11 and 12 of the citation. They may be reproduced for the purpose of comparison of the incidents in question :

"This brings us to the criminal activities of the detinue-petitioner which are said to have taken place on 10.8.1994 at 4.00 p.m. and on 12.8.1994 at 7.00 p.m. In the incident dated 10.8.1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12.8.1994 at about 7.00 p.m. the detinue-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed

towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tempo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tempo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the Act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12.8.1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appears to have been registered against the detenu-petitioner concerning the said incident. There remains the solitary incident dated 10.8.1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10.8.1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or abetting the commission of offences as contemplated in Sec.2(c) of the Act because the expression 'habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to recovery of .32 bore country-made revolver from the possession of the

petitioner without any permit or licence which is an offence under Sec.25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenue-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained."

6. The Apex Court observed that it would be necessary to determine whether besides the person being a 'dangerous person' his alleged activities fall within the ambit of the expression 'public order'. It has observed that a distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". Referring to the earlier decision in Arun Ghosh V. State of West Bengal reported in 1970 (1) SCC 98 it has been observed that the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amount only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions

of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Reference was also made to another earlier case in *Piyush Kantilal Mehta V. Commissioner of Police*, 1989 Supp. (1) SCC 322. It has been observed that for saying that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land. *Piyush Kantilal Mehta's* case (supra) was the case of a boot-legger. There it was made clear that merely because a detainee was a boot-legger within the meaning of Sec. 2(b) of the PAsA he could not have been provisionally detained thereunder. The emphasis was with respect to whether his activities as a boot-legger would adversely affect the maintenance of the public order.

7. Mr.K.C. Shah, learned A.G.P. for the State has in reply referred to an earlier decision of the Apex Court in the case of *Mrs.Harpreet Kaur Harvinder Singh Bedi V. State of Maharashtra & Anr.*, reported in AIR 1992 SC 979. On comparing the facts in this case with the facts in the above mentioned decisions of the Apex court it clearly appears that the facts of this case more resemble the facts in the case of *Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P.* (Supra). As a matter of fact, it will be noticed from the two incidents which are quoted from the statements of the witnesses that the concerned witnesses were assaulted in respect of their individual acts for which there is no complaint or F.I.R. lodged. In the facts of the present case, therefore, the decision of *Harpreet Kaur's* case would not be applicable. Relying upon the decision in *Mustakmiya's* case (Supra), this petition deserves to be allowed.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of *Mustakmiya's* case (Supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Gabhubhai Hirabhai Rabari shall be forthwith set at liberty if he

is not required to be detained in any other case. Rule
made absolute accordingly.

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